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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/265,788	03/10/1999	ROBERT ZHONG LU	08291/482001	4926

26211 7590 12/17/2002

FISH & RICHARDSON P.C.  
45 ROCKEFELLER PLAZA, SUITE 2800  
NEW YORK, NY 10111

EXAMINER

GARRETT, DAWN L

ART UNIT	PAPER NUMBER
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1774

DATE MAILED: 12/17/2002

25

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Applicati n N .</b>	<b>Applicant(s)</b>	
	09/265,788	LU ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Dawn Garrett	1774	

-- The MAILING DATE f this c mmunication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 23 September 2002.
- 2a) ☒ This action is **FINAL**.
- 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 4-9,11,12,14,15,17 and 18 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 4-9,11,12,14,15,17 and 18 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☒ All b) ☐ Some \* c) ☐ None of:  
1. ☒ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                             | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____  |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)         | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: _____                                    |

Art Unit: 1774

## DETAILED ACTION

### *Response to Amendment*

1. This Office action is in response to the amendment mailed September 23, 2002, paper no. 24. Claims 1, 2, 13, and 16 were canceled. Claims 4-9, 11, 12, 14, 15, 17, and 18 are pending.
2. The rejection of claims 1, 2, 13, and 16 under 35 USC 102(b) as being anticipated by van Buskirk et al. (US 5,576,284) is withdrawn due to the cancellation of claims 1, 2, 13, and 16 in paper no. 24.
3. The rejection of claims 1, 2, 13, and 16 under 35 USC 102(b) as being anticipated by Inoue et al. (EP 0 698 660 A2) is withdrawn due to the cancellation of claims 1, 2, 13, and 16 in paper no. 24.
4. The rejection of claims 1, 2, 4-9, 11-14, 16, and 17 under 35 USC 103(a) as being unpatentable over Richter (US 5,728,667) is withdrawn due to the cancellation of claims 1, 2, 13, and 16 in paper no. 24.
5. The rejection of claims 15 and 18 under 35 USC 103(a) as being unpatentable over Richter (US 5, 728,667) is maintained.

### ***Claim Rejections - 35 USC § 112***

6. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

7. Claims 4-9, 11, 12, 14, and 17 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claims 4-9, 11, 12, 14, and 17

Art Unit: 1774

are indefinite, because they depend upon now cancelled claim 1. Claims 4-9, 11, 12, 14, and 17 have not been further treated on the merits.

***Response to Arguments***

8. Applicant's arguments filed September 23, 2002 have been fully considered but they are not persuasive. With regard to the rejection over Richter, applicant argues Richter does not describe glycoside surfactant as essential to the Richter compositions. The examiner submits that Richter clearly teaches glycoside surfactants are preferred nonionic surfactants in the Richter compositions (see col. 9, lines 54-57). Applicant further argues "A key shortcoming of the Office's positions lies in the fact that a skilled formulator, faced with the Richter reference would produce a composition which would be successful to satisfy the treble goals of cleaning, disinfecting and minimal or no irritancy." The examiner respectfully submits the Richter compositions are cleaning compositions with a sanitizing effect (see abstract) and no harmful irritation from the compositions is taught. Richter teaches the compositions may even be used as personal care product formulations such as hand soap (see col. 15, lines 29-31), so the compositions are clearly not irritating.

The examiner has not found applicant's argument that "the Office has not shown what motivation there would be in the art to use an alkylpolyglycoside surfactant, known to be an irritant, in a role which is directly contrary to its avowed properties (irritant)" nor the information contained in the Material Safety Data Sheet for alkylpolyglycoside surfactant to be persuasive in overcoming the rejections of record. The examiner

respectfully notes that Richter teaches compositions comprising polyglycosides and teaches the compositions are not irritating as discussed in the above paragraph.

With regard to applicant's discussion of mitigation and foaming of the instant compositions, the examiner submits that the Richter composition would exhibit the same properties, because Richter teaches ingredients which read upon those recited in the instant claims.

With regard to the declaration of Robert Zhong Lu (July 2000), the examiner submits the data is insufficient to establish unexpected results because components other than the alkylglycoside, Glucopon, were varied. There is a lack of clear side-by-side comparisons between the instant compositions and the comparison compositions to establish unexpected results.

The rejection over Richter is respectfully maintained.

### ***Conclusion***

9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any



extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dawn Garrett whose telephone number is (703) 305-0788. The examiner can normally be reached Monday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cynthia Kelly can be reached at (703) 308-0449. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9310 for regular communications and (703) 872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-2351.

D.G.  
December 16, 2002

CYNTHIA H. KELLY  
SUPERVISOR / PATENT EXAMINER  
TECHNOLOGY CENTER 1700

